

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

**B.P.J., by her next friend and mother,
HEATHER JACKSON,**

Plaintiff,

v.

**Civil Action No. 2:21-cv-00316
Honorable Joseph R. Goodwin, Judge**

**WEST VIRGINIA STATE BOARD OF EDUCATION,
HARRISON COUNTY BOARD OF EDUCATION,
WEST VIRGINIA SECONDARY SCHOOL
ACTIVITIES COMMISSION, W. CLAYTON BURCH
in his official capacity as State Superintendent, and
DORA STUTLER in her official capacity as
Harrison County Superintendent,
Defendants,**

And

**LAINIEY ARMISTEAD,
Defendant-Intervenor.**

**WVSSAC’S REPLY IN SUPPORT OF MOTION
IN LIMINE TO EXCLUDE BLATT EXHIBIT 21**

Now comes West Virginia Secondary School Activities Commission (WVSSAC), by counsel, Roberta F. Green, Kimberly M. Bandy, Shannon M. Rogers and Shuman McCuskey Slicer PLLC, and replies to Plaintiff’s Opposition to Defendant West Virginia Secondary School Activities Commission’s Motion *in Limine* to Exclude Blatt Exhibit 21 (Plaintiff’s Response), as follows.

In Plaintiff’s Response, Plaintiff reports for the first time that Exhibit 21 will not be submitted for the ‘truth of the matter asserted therein’ but rather as evidence of the State Board’s “review and knowledge of the contents of H.B. 3293 . . . to provide context for the State Board’s

position that it does not support H.B. 3293.”¹ Further, Plaintiff asserts that Exhibit 21 will not be used “as evidence that Mr. Dolan has any specialized knowledge about H.B. 3293 or that WVSSAC is ‘align[ed] with the legislation of the state.’”²

Plaintiff does not dispute WVSSAC’s analysis of unfair prejudice to WVSSAC of Mr. Dolan’s name appearing in the Green Book without any evidence of his knowledge, let alone ‘specialized knowledge’ of the legislation. Conversely, it appears that Plaintiff has no interest in tying WVSSAC to the Green Book. Given the use of Exhibit 21 to date and WVSSAC’s presumptions relative to Plaintiff’s interest and use (as demonstrated at deposition and in motions practice), it would be reasonable to assume that Mr. Dolan’s name there could lead to confusion. It certainly would result in waste of time, as WVSSAC will question the State Board, by and through Michele Blatt, relative to the significance of Mr. Dolan’s name there, as demonstrated, once again, at deposition and in motions practice.³

Therefore, WVSSAC moves the Court for an Order *in limine* precluding use of the Green Book other than with Mr. Dolan’s name redacted therefrom. For all of the reasons set forth here, WVSSAC moves this Honorable Court for an order in *limine*, prohibiting the use of Exhibit 21 the Green Book at the trial of this matter as long as Bernie Dolan’s name appears therein.

**WEST VIRGINIA SECONDARY SCHOOL
ACTIVITIES COMMISSION,
By Counsel.**

/S/ Roberta F. Green

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¹ ECF No. 439 at 2-3.

² ECF No. 439 at 2.

³ ECF No. at 391.

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CERTIFICATE OF SERVICE

I hereby certify that I, Roberta F. Green, have this day, the 11th day of July, 2022, served a true and exact copy of the foregoing with the Clerk of Court using the CM/ECF System, which will send notification of such filing to the following counsel of record:

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